

Internal Revenue Service  
**memorandum**

CC:TL  
Br3:FJElward

date: NOV 2, 1989

to: District Counsel, Austin CC:AUS:LJHubbard

from: Assistant Chief Counsel (Tax Litigation) CC:TL

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subject: [REDACTED]

This is to confirm the informal advice given to Mr. Hubbard by Mr. Elward. Mr. Hubbard requested an immediate informal response so he could give timely advice to the District Director.

The issue is whether the Service must allow an application under section 1341 if the taxpayer files a complete and mathematically correct application even though your office and the District Director are of the opinion that the taxpayer is not entitled to the refund based on the merits of its "claim" under section 1341.

[REDACTED], sometimes referred to in this memo merely as [REDACTED] or the taxpayer, filed a timely application for refund under section 6411(d) which is complete and mathematically correct. Your office and the office of the District Director, while not claiming the application is incomplete or not mathematically correct, are inclined to disallow the application on the ground that the taxpayer is not entitled to the benefits of section 1341 on the merits. The merits are complex and could not be considered in the brief time available.

[REDACTED]'s attorney claims that the application under sections 6411 and 1341 cannot be examined on the merits as if it were a claim for refund and since it is complete and mathematically correct it must be allowed. In his submission he cites the language of section 6411(b), which is applicable to applications for tentative refund under section 6411(d) as well as applications for tentative net operating loss carryback adjustments under section 6411(a).

The language of section 6411(b) does, as contended by [REDACTED]'s attorney, state that the application shall be given a limited examination to determine whether it is complete and does not contain mathematical errors. Such complete and mathematically correct applications are to be allowed in 90 days.

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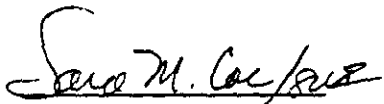
Erroneous allowances of applications under section 6411 can be remedied by the Commissioner by an immediate assessment under an exception to the restrictions on assessments provided by section 6213(b)(3). Such assessments are made in the same manner as mathematical errors except that the procedure under section 6213(b)(2) by which the taxpayer can require abatement of the assessment and a notice of deficiency to be issued are not applicable to an assessment under section 6213(b)(3).

Thus although the Code mandates the allowance of an application for tentative refund which is complete and mathematically correct, it also permits the Commissioner to restore the status quo ante at any time. Therefore, if at any time an application for tentative refund is deemed to have been improperly allowed, the Commissioner can make an immediate assessment and the taxpayer's only remedy is to file a claim for refund, which the Commissioner can examine on the merits.

The Commissioner might allow an application for tentative adjustment and before the refund is made reassess the amount deemed erroneous. In such a case, the amount actually refunded is only the difference, if any, between the allowance and the assessment. Thus in the present case, [REDACTED]'s application could be allowed, but an assessment made in an equal amount. The assessment could be offset against tentative allowance resulting no refund being made to [REDACTED].

MARLENE GROSS

By:



SARA M. COE

Chief, Branch No. 3

Tax Litigation Division